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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 14TH MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 13 August 1992, at 10 a.m.

Chairman: Mr. ALFONSO MARTINEZ
later: Mr. SACHAR

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GE.92-13212 (E)

The meeting was called to order at 10.15 a.m.

ORGANIZATION OF WORK (continued)

1. The CHAIRMAN suggested that, since delegations might wish to participate in the deliberations currently taking place in the Commission on Human Rights, which was meeting in special session, they should be given the floor when it was convenient for them.

2. It was so agreed.

3. Mrs. KSENTINI described the unpleasant experience she had had that morning when crossing the border between France and Switzerland, an experience that was illustrative of the situation in which nationals of third world countries might find themselves when they crossed the borders the Western countries. After one look at her face and Algerian passport, a customs officer had made her get off the bus with no explanation although she had shown papers that were perfectly in order, including a diplomatic passport exempting her from a visa, together with her Sub-Commission membership card. The senior customs officer, to whom she had complained, acknowledged their mistake: they had thought she needed a visa. The incident had caused her much humiliation and loss of time, and the Swiss authorities should be asked to provide customs agents with proper training so that they would be fully familiar with the rules they had to apply.

4. The incident gave rise to a discussion in which Mrs. WARZAZI and Mr. MAXIM, who had themselves been victims of similar incidents on previous occasions, Mr. SABOIA, Mrs. ATTAH, Mr. JOINET, Mr. SACHAR, Mr. UL- HAKIM, Mr. TIAM JIN, Mr. GUISSE, Mr. EIDE, Mr. RAMADHANE and Mr. KHALIFA took part, indicating their shock and indignation at the increasing number of incidents that were indicative of racial sentiments, all the more outrageous because they were directed against the members of a body entrusted with combating discrimination and therefore doubly deserving of respect. They demanded explanations and an official apology from the Swiss authorities and asked once again that a document serving as a visa, like the one issued to Mr. Mazilu, should be issued to them to protect them from similar unpleasantness and humiliation. They expressed surprise that the issuance of such a document raised so many difficulties when one saw how easily certain persons could obtain one. That was a very disturbing question which should be settled quickly, for such incidents wasted the Sub-Commission's time. The Under-Secretary-General for Human Rights and a representative of the Swiss authorities should come before the Sub-Commission to provide it with explanations.

5. Mr. JOINET said he believed the least that could be expected was for the competent Swiss authorities to apologize. Two members of the Sub-Commission should go to the Customs Service to explain that its attitude was unacceptable given the very name of the Sub-Commission. Regarding immunities and privileges, he referred the experts to the report of the Inter-Sessional Working Group (E/CN.4/Sub.2/1992/3), in which the Working Group requested

that, to strengthen the experts' independence, they should be issued a United Nations certificate attesting their status as "experts on mission". The members of the Committee on the Rights of the Child had such a certificate; why should the members of the Sub-Commission not also have one? He proposed that a memorandum should be sent to the Under-Secretary-General for Human Rights requesting a positive response at the current session, which implied that the Under-Secretary-General would attend the discussion on agenda item 3.

6. The CHAIRMAN said that there were two aspects to the situation: the personal offence against the expert as an individual and the offence against the institution to which the expert belonged. He was prepared to contact the Under-Secretary-General for Human Rights immediately to inform him of the incident and proposed that when the Under-Secretary-General came, the members of the Sub-Commission should tell him of their concern and stress the need to ask the Swiss authorities to conduct an inquiry and apologize to Mrs. Ksentini and the Sub-Commission. It would also be advisable for the legal representative of the Secretariat to inform the Sub-Commission about the substance of the discussions that had taken place with the Swiss Government concerning the issuance of a document to protect them against that type of unpleasantness.

7. Mrs. WARZAZI said that the document which the members of the Sub-Commission needed had to be issued by the United Nations Secretariat, not the Swiss authorities. Furthermore, if such an incident recurred, the Sub-Commission should inform the media to give it the publicity it deserved.

8. The CHAIRMAN explained that reference was being made to two different documents, one issued by the United Nations Secretariat and not involving any consultations with the Swiss authorities, and the other, issued by the Swiss authorities, concerning which discussions had been held. The latter document, moreover, would only provide extra protection against lack of understanding by the Swiss Customs Service. Thus there was no contradiction between his proposal and Mrs. Warzazi's remarks.

9. Mr. MAXIM proposed that the Sub-Commission should request a certificate from the United Nations Secretariat only. That document could indeed be provided by the Protocol Service and would be sufficient for the members of the Sub-Commission. He would like to know why the Legal Service should not issue it to experts at once.

10. The CHAIRMAN noted that the members agreed that Mr. Blanca should be informed of the incident and its seriousness in their opinion and asked to contact the Swiss authorities in order for the necessary measures to be taken, including the appropriate apologies.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII) (agenda item 6) (continued) (E/CN.4/Sub.2/1992/13; E/CN.4/Sub.2/1992/14; E/CN.4/Sub.2/1992/39; E/CN.4/Sub.2/1992/40; E/CN.4/Sub.2/1992/41; E/CN.4/Sub.2/1993/3-E/CN.4/Sub.2/1992/42; E/CN.4/Sub.2/1993/5-E/CN.4/Sub.2/1992/43; E/CN.4/Sub.2/1992/45; E/CN.4/Sub.2/1992/47; E/CN.4/Sub.2/1992/NGO/4; E/CN.4/Sub.2/1992/NGO/6; E/CN.4/Sub.2/1992/NGO/8; E/CN.4/Sub.2/1992/NGO/13; E/CN.4/Sub.2/1992/NGO/14)

11. The CHAIRMAN, taking up agenda item 6, recalled that, in resolution 1991/8 on the situation in Cambodia the previous year, the Sub-Commission had called upon the Secretary-General to dispatch without delay, to all the provinces of Cambodia and to the refugee camps located in Thailand, a special mission to examine the situation of the population with regard to respect for human rights. He invited Mr. McNamara, who was in charge of the Human Rights Component of the United Nations Transitional Authority in Cambodia (UNTAC) to describe, in the context of agenda item 6, UNTAC's human rights activities in Cambodia.

12. Mr. McNAMARA said that, in conformity with the Sub-Commission's request in its resolution 1991/8, namely that the teaching of human rights to the whole population of Cambodia should be organized forthwith, through appropriate channels, UNTAC was currently undertaking various programmes for raising awareness of human rights and fundamental freedoms, aimed at all levels of society, including illiterate people, by using radio and television. UNTAC also reviewed legislation, court procedures and prison conditions. Its mandate enabled it to receive complaints from persons who felt that their rights had been violated, to investigate the allegations and where necessary to take action to end the violations. The numerous complaints before it (over 200 to date) permitted UNTAC to identify the problem areas and design corresponding measures for improvement.

13. All those activities were aimed at creating conditions that would prevent the return of the policies and practices of the past and at achieving a minimum level of respect for human rights throughout the country, a sine qua non for the holding of free and fair elections, supervised by the United Nations, in May 1993. It had become clear that standard approaches for the improvement of human rights enjoyment did not apply in Cambodia. The country lacked a basic legal infrastructure. More than 20 years of conflict had left Cambodia virtually without lawyers, judges, legal institutions or human rights groups. Thus there was a need for the rehabilitation, indeed installation, of the legal and judicial systems to be undertaken in parallel with human rights advocacy programmes. To transform Cambodia from conflict to reconciliation and from military rule to a society under the rule of law was an immense undertaking. It was clear that promotion and protection of human rights were instrumental to the success of that transition. But to do so within a year with limited resources in a country lacking basic infrastructures and expertise was a monumental challenge. Thus UNTAC hoped that all interested organizations, including the Centre for Human Rights and the non-governmental organizations, would become actively involved in improving the human rights situation in Cambodia.

14. The international community had a special responsibility to ensure that the current momentum was maintained and that institutions and programmes put in place by UNTAC were continued after the expiry of its mandate. The same was valid for education, infrastructural reform, review of legislation, human rights monitoring and the encouragement of indigenous NGOs. In that context, UNTAC was planning to convene an international symposium on human rights in Phnom Penh in December 1992 with a view to drawing the international community's attention to the situation in Cambodia.

15. UNTAC's human rights mandate was the broadest ever entrusted to any United Nations peace-keeping operation. UNTAC was empowered fully to investigate complaints, to propose legal and judicial reform, to review prison conditions and grounds for detention and to launch mass public human rights information and education programmes. The Cambodian operation could generate important lessons for the future direction of human rights activities. Cambodia was a human rights challenge that the international community, and especially the United Nations, could not afford to fail.

16. Mr. GUISSE said that he did not share Mr. Bossuyt's optimism concerning the situation of black people in South Africa. The black population was still being deprived of its fundamental rights, in particular the right to vote, and black people were often the victims of unfair dismissals by the white minority, which controlled over 80 per cent of the country's economy. On another matter, one could only deplore the concept of "ethnic cleansing" currently being put into practice in the former Yugoslavia and which was a most unpleasant reminder of the concept of "pure race" used before the Second World War, and that of the separate development of the races. But the peoples of the former Yugoslavia were not the only ones to suffer: the Somalian people were currently being decimated by armed gangs, famine and disease. States were not the only ones bound to ensure respect for human rights; so were groups and individuals.

17. Mr. MERRILLS said that the search for solutions might be facilitated by classifying human rights violations in two major categories. The first category contained conflicts between a Government and a segment of its people. In those cases, the solution lay in finding a political accommodation between the elements in society which were in conflict, and at that stage human rights institutions had only a limited part to play. However, if the conflict took on the proportions of a civil war, human rights institutions should remind the parties in conflict that there were certain rights that were not subject to derogation, such as the right not to be tortured. He noted in that connection that Mr. Eide, in cooperation with other persons, had prepared a document entitled "the Turku Declaration", which suggested codification and development of that part of humanitarian law.

18. The second category concerned situations of general repudiation of democratic values by an authoritarian Government, military or other. In such cases the Sub-Commission's task was to examine the extent to which the Government in question was respecting general human rights standards as set forth in the international instruments and fulfilling obligations deriving from international customary law. In conclusion, he stressed the need for both States and individuals to live in the present and look towards the

future, not to keep turning over the sometimes painful experiences of the past but to learn from them for the purpose of building a better world.

19. Mrs. FORERO UCROS said that the end of the East-West conflict had raised hopes for a new international order based on democracy and respect for fundamental freedoms. Instead, the world was witnessing a resurgence of racism and an increase in inequality and the havoc caused by ethnonationalism, which trampled human rights underfoot. Regarding respect for human rights, to be objective the international community should not only remind States of their responsibilities; it should also condemn terrorist groups which terrorized the civilian population, destroyed infrastructures and national heritages and hindered development. It should also help countries to combat drug traffickers at all levels, whether that of production, manufacture, traffic, consumption or laundering of the money made from the traffic.

20. Such violence was due to poverty and social inequality, which in the developing countries prohibited the exercise of human rights and stood in the way of strengthening democracy. The development of those countries was greatly hindered by protectionist barriers, the debt burden, and the requirements of the international financial institutions. In order to end the violence, their Governments ought to ensure respect for justice, prohibit any form of paramilitarism, set up effective mechanisms for protecting human rights and monitor their agents' actions effectively. Obviously the United Nations also had a fundamental part to play: it should in particular prevent conflicts, including those caused by ethnonationalism, publicize human rights and train the State officials entrusted with enforcing them.

21. Mr. KHALIFA deplored the fact that the end of the cold war and the break-up of the Soviet Union, far from meeting the hopes raised, had opened the way to so many atrocities and such large-scale violations of human rights. The world was currently in a situation of rebellion by minorities, attacks on the overriding principle of national sovereignty, the resurgence of the extreme right and racism and the marginalization of a third world which in fact no longer fitted that description.

22. It was deeply disturbing to see that violence had become intertwined daily life: in politics, the press, the street, entertainment, television, even music. Thus in a recent recording, a rock group glorified "the killing of cops". Ethnic minorities were targets almost everywhere, and the ugly expression "ethnic cleansing" was gaining notoriety. Serbia, which had inherited the former Yugoslavia's military might, was openly applying that theory to forge a Greater Serbia at the expense of Bosnia and planning to do the same in Kosovo. Croatia, for its part, was encouraging the Croatians in Bosnia to proclaim their own independent republic. Bosnia, the victim of aggression, was being carved up because it had no rich neighbours or oil and could not pay the cost of its liberation. The major Powers were only concerning themselves with stopping the fighting and providing humanitarian aid. It might be wondered who would hold the Serbs in check once peace was re-established. Where were the 38 States that had mobilized an armada to throw Saddam Hussein out of Kuwait? In Bosnia, because of Realpolitik, it was not a question of aggression but of humanitarian aid. Only the naive had ever considered the liberation of Kuwait as a prototype.

23. The United Nations was once again in the forefront. It was again being called on in the Bosnian crisis, but the United States, so eager to become involved in the Gulf crisis, was insisting that its intervention should be limited to humanitarian aid. It probably feared - rightly so - becoming bogged down in a difficult situation at a time when it needed to devote all its resources and all its energy to improving its domestic situation. In the circumstances, a warning was in order: the United Nations was based on the sovereignty of its States Members. If that sovereignty began to be eroded, the sovereignty of the United Nations would be affected. The United Nations must be kept credible and must remain an authentically international organization, for the world could not tolerate what in his view was a de facto privatization of the Organization.

24. However, he feared that in view of the - quite genuine - suffering it was witnessing, the international community would gradually accept the concept of humanitarian intervention. Some held that there was a need to reassess the prevailing view of national sovereignty that might have contributed to recent disasters. General Assembly resolutions 44/129 and 44/155 marked a significant step in that direction. Although the wording of those resolutions was vague and equivocal, he hoped that the General Assembly would not take further steps in a direction that appeared to him to be very perilous. There was no clear-cut line between humanitarian intervention and outright intervention. However, whether interventionism was practised individually or collectively, it would have to be selective. On the one hand it was costly, and on the other there would be times when the political will was lacking. In any event, the United States, which was assuming a forceful leadership role, would one day have to abandon that role, which its economy could not tolerate for long.

25. The interventionist spirit and disdain for the sacred principle of State sovereignty went hand in hand with the awakening of the extreme right. Communism had scarcely crumbled when fascism and neo-Nazism, and the populist movements that went with them, began to be revived. The recent elections in France, Germany and even Scandinavia, which might have been thought to be spared such phenomena, showed that nationalist and xenophobic parties gained considerable ground in a context of economic recession.

26. In the words of Oscar Arias Sanchez, Nobel Peace Prize laureate, could poor people be stopped at national borders, or, more precisely, could poverty be stopped from travelling - in the form of drug addiction, pollution, terrorism and AIDS? It could not; the fate of the haves and the have-nots was inextricably intertwined. He referred to the poverty that was looming large in the highly industrialized nations, unable to provide for their increasing numbers of poor, not to speak of the extreme poverty of the rest of the world, whether in eastern Europe or the countries of the third world. The latter too often tried to emulate the Western model, flirting ineffectually with the free market, criminality, prostitution and drugs. Was that the price of freedom? He quoted Lech Walesa, who had recently accused the West of betraying his nation by deluging it with consumer goods but refusing to make major investments. He did not wish to predict an Armageddon, but patience definitely had an end.

27. Mr. Sachar took the Chair.

28. Mr. VITTORI (Pax Christi International) said he deeply regretted the incident that had befallen Mrs. Ksentini and said that he would ask the Swiss section of his organization to intervene with the Swiss authorities.

29. He drew a parallel between the Nazi concentration camps and the current attempts at "ethnic cleansing" and expressed surprise at the behaviour of the international community in that respect. The special session of the Commission on Human Rights should propose genuinely effective measures. The dismantling of the concentration camps have a top priority, and should be accompanied by measures for resettling the displaced populations and dispatching international humanitarian aid. Such measures implied a firm political will and the bringing to bear of appropriate pressure, among which Pax Christi advocated non-violent action.

30. He hoped that the embargo imposed on Yugoslavia would be turned into a selective blockade; why should aggressors and victims be treated on an equal footing? Radio and television in the democratic countries should alert the people, especially the Serbs, to what was being done in their name and make the voice of reason heard in order to end the atrocities. The attention of those concerned should also be drawn to the penalties prescribed for crimes against humanity, to which not only those ordering the crimes but those carrying them out were liable. He suggested that Mr. Guissé and Mr. Joinet should deal with that question in their work on impunity. He believed that a campaign of passive resistance and conscientious objection - without prejudice to other measures - could also influence the Serbian people.

31. The situation in Yugoslavia should not distract from other equally difficult situations. The famine in Somalia, for example, should mobilize the international community on an emergency basis. Pax Christi noted that during the cold war, military expenditures had been as high as $2 million per minute, and was astonished that the funds needed for saving human beings from the famine could not be found. The famine, although it was partially attributable to the drought, could also be attributed to the war being waged by the three rival factions in Somalia. He called on the United Nations to restore peace. A similar mission would also be needed in Sri Lanka, Afghanistan, Kurdistan, Liberia and Sudan, Rwanda and Western Sahara. Pax Christi strongly criticized the behaviour of the wealthy countries, which was more willing to make sacrifices for their military expenditures than for the genuine promotion of peace and justice.

32. Pax Christi wished to refer to the violation of United Nations decisions with regard to Timor, Tibet, Burma, and the Israeli-occupied territories. It deplored the embargo against Haiti and denounced the military training taking place in a camp in Sudan, with the financial assistance of Iran.

33. In conclusion, Pax Christi quoted the Secretary-General of the United Nations in recalling the primary purposes of the Charter of the United Nations, namely a United Nations capable of maintaining international peace and security, ensuring justice and respect for human rights.

34. Mr. AL-JADIR (Arab Organization for Human Rights) said that his organization had published the previous month its annual report on the human rights situation in the Arab countries. Regarding Palestine,

negotiations had begun with a view to reaching a peaceful settlement and enabling the Palestinians to obtain autonomy, but no reference had been made to self-determination or the right of return, which were fundamental rights. Israel had pursued its policy of settling the occupied territories and continued to kill Palestinians who opposed the occupation. Nevertheless, Israeli television had for the first time shown in action the secret units, who were responsible for the deaths of many Palestinians involved in the intifada. Arrests had also continued: 8,525 arrests had been made since the beginning of the intifada until November 1991, according to a spokesman for the Israeli army. Another practice persisted: that of deliberately breaking the bones of persons arrested; 65,000 such cases had been recorded from the beginning of the intifada until October 1991.

35. The occupying authorities continued to violate the right to freedom of expression, as attested by the closing of four information organs followed by that of a press service and a press agency on 20 February. The journalist Tarek Shurtaih, a correspondent for the Reuter Agency, had also been arrested. Finally, during the Gulf war, the Israeli authorities had prohibited journalists from travelling to the occupied territories, which were declared to be "prohibited military areas" from 17 January up to late April 1991.

36. Restrictions on the right to enter and leave the occupied territories had increased in 1991. The number of expulsions had also increased. On 7 January 1991, four Palestinians had been expelled from the Gaza Strip followed by four more on 18 May. The Israeli authorities had also prohibited some 5,000 Palestinians who had left Kuwait during the Gulf crisis from re-entering the occupied territories, despite their being in possession of documents authorizing them to live there.

37. Concerning Iraq, on 5 April 1991 the Security Council had adopted resolution 688 (1991) in which it had condemned the repression of the Iraqi civilian population, demanded that Iraq immediately end that repression and appealed to all humanitarian organizations to contribute to the humanitarian relief efforts. However, that resolution had gone unheeded, and neither the Iraqi totalitarian Government nor the Security Council had given effect to it. He hoped that the Sub-Commission would give that resolution the attention it deserved.

38. Concerning the famine raging in the Horn of Africa, the political disturbances in that part of Africa were hindering the international community's effort. In Sudan, the relief operations were making slow progress. The situation was all the more complicated because some 400,000 Sudanese refugees who had been in camps in Ethiopia had had to settle in the border and swamp zones controlled by the Sudanese People's Liberation Army. In Somalia, famine compounded the already disastrous human rights situation in that country, torn by armed conflicts. According to all reports, the population suffered from lack of food and medical care. Once again, the children were the worst affected. What was more, relief teams faced virtually unsurmountable difficulties.

39. The Gulf war had brought out the problem of persons who had been born in Kuwait and lived there all their lives but did not have Kuwaiti nationality.

The problem of the "bidouns" reflected a gap in the Kuwaiti Nationality Code of 1959, which divided the Kuwaiti population into several categories at the political, social and economic levels, in flagrant violation of human rights principles. The problem went back to the period of independence, when the Government had established several committees to consider applications for naturalization and check applicants' identities. Some applications had been accepted; others had been rejected for lack of sufficient proof. He urged the Sub-Commission to consider that problem in the light of recent events in Kuwait.

40. Mr. RODRIGUEZ (Andean Commission of Jurists) said that the existence of constitutional regimes in the Andean countries - with the exception of Peru - could lead one to think that the political conditions of the previous decades, which had produced grave violations of human rights, no longer prevailed. However, the construction of authentic democracies in those countries had not been achieved, due to the inadequacy of their institutions. The administration of justice was the weakest link in the chain, because of its inability to process the conflicts generated by the social and economic crises which to one degree of another affected the Andean countries.

41. Since 1988, 10 people a day had been killed in Colombia for ideological reasons: 5 for political reasons, 4 in the war between the army and guerrilla groups and 1 in "social clean-up" operations. Similarly, a person "disappeared" every two days. In the first six months of 1992, 1,863 people had been killed in such situations. Where the author or motive had been identified, 40 per cent of the cases were attributed to State agents, 30 per cent to paramilitary groups and 27.5 per cent to the guerrilla. Drug traffickers were considered to be the material authors in only 0.18 per cent of known cases. In 1991, 3,700 people had been murdered as a result of political or ideological violence; that figure represented 13 per cent of all homicides. Those human rights violations were taking place at a time when the evolution of democracy stemming from the 1991 Constitution was facing serious difficulties. A state of emergency had already been declared on two occasions in 1992, and the Government had proposed a new law on states of emergency that was characterized by restrictions of civil liberties and the usurping of legislative and judicial powers by the executive. In July habeas corpus had been suspended for cases of drug trafficking and terrorism, and the Government was seeking to make that derogation a permanent measure. During 35 of the 42 years between 1949 and 1991, Colombia had been governed, and continued to be governed, by states of emergency. The human rights situation had again worsened in May with the suspension of talks between the Government and the guerrilla. Seven hundred and eighty Colombians had died in the armed conflict in the first six months of 1992. Moreover, the policy of reduced sentences for drug trafficking was being seriously questioned since the escape from jail on 22 July of the drug trafficker Paulo Escobar. That strategy, which had been aimed at introducing a more civilized approach to the treatment of drug traffickers, had not always been properly employed and had involved high levels of corruption and inefficiency.

42. That critical human rights situation deserved attention from the Sub-Commission. Colombia had received advisory services from the Centre for Human Rights which had been important but were insufficient to deal

with the magnitude of generalized disrespect for human rights in the country. Increased United Nations assistance for Colombia indispensable. Such assistance might help to consolidate the constitutional process and simplify the implementation of the recommendations made to the Colombian Government by the Working Group on Enforced or Involuntary Disappearances, particularly with respect to the need to avoid abusing emergency powers and to remove from service all State agents involved in human rights violations.

43. In Peru, political violence had led to 35,000 deaths since 1980. Enforced disappearances continued unabated: in 1991, 395 disappearances had been reported, and there had been 113 in the first six months of 1992. With respect to extrajudicial executions, between August 1991 and July 1992 there had been 85 executions attributed to the security forces and 34 to paramilitary groups. During that period, the Shining Path had murdered close to 800 people. Those human rights violations were aggravated by the climate of social conflict and restrictions on democracy due to the 5 April coup d'état, which limited even more the possibility of denouncing, investigating and sanctioning those crimes. The current regime had found no effective ways to deal with terrorism, and had paid attention to its effects rather than its causes. Impunity continued to generate violence. Neither the atrocities committed by the subversive movements nor the human rights violations committed by the security forces had been sanctioned. Judges were constantly threatened when they tried members of subversive groups; the members of the security forces accused of violating human rights went unpunished, and in any event should be tried in the ordinary courts. Additionally, the autonomy of the judicial branch had been dealt a severe blow after the coup d'état and the decision to try persons accused of terrorism in the military courts, which was far from facilitating human rights protection. The violence of Shining Path and the Government's exercise of authoritarian and unchecked power revealed a very complex situation which more than ever required the attention of the international community, which could help to bring back a truly democratic form of government, the only one capable of attacking the country's problems while assuring full respect for human rights.

44. Mrs. AMIR (Women's International League for Peace and Freedom) drew the attention of the Sub-Commission to the systematic violations of human rights, especially women's rights, in Iran. With the advent of the Islamic Republic in 1979, Iranian women had been reduced to second-class citizens. They had been deprived of all the constitutional rights that had been granted to them under the Shah, through the Family Protection Law which had banned polygamy and conferred on women the rights and have custody of their children. The repeal of the Family Protection Law had resulted in the re-establishment of men's unilateral right and the increased dependence of women on their husbands. The Islamic laws also banned women from entering certain professions and pursuing studies in certain spheres, especially technical and scientific fields, and agriculture. The entire educational system had been Islamicized in order to create obstacles to women's education. Over 40,000 women elementary and high school teachers had been dismissed within the first few years of the establishment of the Islamic Republic. The lack of female teachers had resulted in the closure of many schools for girls, since schools were not mixed, so that at least 89 per cent of Iranian rural women were illiterate. Public displays of women's sports were subject to severe

punishment and women were segregated from men in public transportation systems.

45. Harassment of women who did not comply with the Islamic code of dress, or Hejab, had become commonplace. In the past few months, hundreds of women had been flogged for that reason. Some of them had even died during the flogging, and in June 1991 several women had been shot by revolutionary guards for protesting against the code. She cited the case of 19-year-old Parivash Ameri, arrested by the revolutionary guards because she had not been dressed in accordance with the Islamic dress code, who had died as a result of torture. In Iranian prisons, women prisoners accused of being opposed to the regime were raped, especially virgin girls, since according to the Islamic principle, only virgins went to heaven when they died. The regime-controlled media were dominated by reports of arrests, flogging and heavy fines imposed on women accused of not observing the Hejab. Such punishments were not considered excessive since, as the Prosecutor-General of Iran had stated on 15 August 1991, "Anyone who rejects the principle of the Hejab is an apostate and the punishment for an apostate under Islamic law is death". It was absolutely essential for all human rights bodies, especially the Sub-Commission, to concern themselves with that situation and act to end the gross and systematic violations of human rights under the theocracy in Iran.

46. Mr. COE (National Aboriginal and Islander Legal Services Secretariat) noted that the right of all peoples to self-determination appeared in the first articles of the Charter of the United Nations and the International Covenants on Human Rights and had come to be regarded under international law as a fundamental human right. However, there were still peoples who could not exercise that right and who were not in control of their own destiny. That was the case of the Australian Aboriginal people, dispossessed of their land by the whites, who had used the doctrine of terra nullius to legitimize their usurpation of the territory. That controversial question had again been mentioned in a recent decision by the High Court of Australia in the case of Mabo v. the State of Queensland, in which residents of the Murray Islands in the Torres Strait, which had been annexed by the colony of Queensland in 1879, had claimed property rights over specified parcels of land on the Murray Islands, rejecting the defence argument that the rights of the plaintiffs, if they had ever existed, had been extinguished at the time of annexation. The Court, with one judge dissenting, had held that Australian common law recognized the entitlement of indigenous peoples to their land, where that right was not extinguished. In so doing, the High Court had officially rejected the doctrine of terra nullius and thus the fiction that the British had settled on land that belonged to no one. However, the High Court had then simply replaced that notion with another equally racist one, the "discovery" doctrine, which gave exclusive title to a land to those who had discovered it. Those two doctrines were essentially the same in character and had the same invidious effect on indigenous people in Australia. The High Court judgement proclaimed the validity of Aboriginal title to the land but also confirmed the power of Governments to extinguish that title at any time by an act of State. Furthermore, since no right to compensation arose from the extinction of the title, there was no further recourse for the dispossessed owner against what was basically legalized land theft.

47. Thus the High Court judgement had in no way helped to change the Aboriginals' status or promote their civil and political rights as set forth in the Covenant, to which Australia was committed by its ratification. Twenty-five years after it had been decided that Aboriginal people were not fauna but a people with collective and individual rights, the wheel appeared to have turned full circle. It was to be hoped that any future inquiry into such fundamental issues would not be left in the hands of those who were attempting to suppress Aboriginal voices in the international community and who denied Aboriginal people their right to self-determination.

48. Mrs. SMITH (Four Directions Council) drew the attention of the Sub-Commission to the situation of Navajo families in the United States, who were being relocated into urban areas under a decision taken by the Congress in 1974. Millions of dollars had been spent on implementing that policy, but very little of the money had gone to help those families who had accepted the relocation. Thus 93 families, or 405 people, had been relocated to Winslow, Arizona, where they were living in very difficult conditions because of high property taxes and utility bills. Nothing was being done to help them. The Navajos were not eligible for municipal loans, were not permitted to keep livestock and could not practise their religion without permission from the mayor. Economic, social, cultural and poverty pressures had caused much mental and psychological disturbance and family problems, which had led to sharp increases in heart attacks, suicides, drug addiction and alcoholism. Children had lost all respect for their parents and their cultural and religious traditions. The Navajos were also the victims of direct or indirect discrimination in other fields, especially access to public schools and to support services and recreational activities for senior citizens and county and city services. They were gradually losing their cultural pride, sense of roots and philosophy of life.

49. Mrs. PARAKH (International Commission of Jurists) said that the International Commission of Jurists (ICJ) was greatly concerned about the deteriorating human rights situation in several parts of the world, especially the breakdown of the rule of law, frequently caused by military intervention in the normal life of a civil society.

50. In Peru, President Fujimori's coup d'état of 5 April 1992 had placed the entire country under the control of the military. The coup d'état had been an act of aggression against the very basis of the rule of law and an outrage to democracy. For more than 12 years, Peru had been the constant victim of attacks by two guerrilla groups, Shining Path and the Tupac Amaru Revolutionary Movement, which were responsible for numerous acts of aggression, but the brutal repression brought to bear by the armed forces and the police, not only against the members of those groups but all those suspected of viewing them with sympathy, had certainly not improved matters. A dictatorship based on brutal force might well have a negative effect on the enforcement of human rights and on the democratic system in Peru. The International Commission of Jurists therefore called for the appointment of a special rapporteur on Peru.

51. The demonstrations that had taken place in the capital of Thailand in May 1992, during which troops had shot at unarmed citizens protesting against the appointment as Prime Minister of General Suchinda Kraprayoon,

a member of the military junta which had taken power after a coup d'état on 23 February 1991, had resulted in 52 deaths and 789 wounded, according to figures obtained by an ICJ mission to the country. It was also estimated that 500 persons had disappeared. Since then, a constitutional tribunal had declared legal the amnesty granted by General Suchinda before resigning on 24 May 1992 to all those involved in the massacre, and while some senior military leaders had been demoted, most of those responsible for the massacre had not been brought to justice. Several commissions had been set up to inquire into the events of May 1992, but they could not be effective if they did not have adequate powers, in particular the power to recommend and direct prosecutions if such prosecutions were found desirable in the public interest.

52. The National Commission of Inquiry appointed by the Indonesian Government to investigate the events that had occurred on 12 November 1991 in Dili, East Timor, when the Indonesian Army had killed more than 50 unarmed civilians, had concluded in its advance report that the security forces had been responsible; however, the few members of the military tried had simply been charged with "disobeying orders" and had received sentences from 8 to 18 months in prison, whereas the Timorese prosecuted for their role in the Dili demonstration and a subsequent one in Jakarta on 19 November had been charged with violating Indonesia's Anti-Subversion Law, which was a capital offence, or with spreading hatred towards the Government, and had been sentenced to prison terms of 5 years to life imprisonment in the Dili incident and 6 months to 10 years in the Jakarta incident. Those trials had served to highlight the flaws inherent in the Indonesian Code of Criminal Procedure, which did not grant defendants the right to remain silent and compelled them to testify in their own trials. Thus, the ICJ believed that the very existence of the Anti-Subversion Law of 1963 and the inadequate provisions of the Penal Code represented a serious violation of basic human rights.

53. In Rwanda, violations of human rights and fundamental freedoms continued despite the fact that the Rwandese Government had recently ratified nine international human rights instruments. Most blatant was the discrimination against members of the Tutsi minority, victims of extrajudicial killings by the security forces and of rape, torture, and arbitrary arrest and detention. The Government also continued to harass political opponents and journalists who criticized it and failed to punish persons guilty of serious human rights violations, which indicated that its formal commitments to human rights were little more than rhetoric.

54. Since 1988, Colombia had also faced a situation of grave and persistent human rights violations. In the first six months of 1992, 1,863 people had been killed for political reasons or had died in combat. Those responsible had been, respectively, State agents (40 per cent of cases), paramilitary groups (30 per cent), guerrilla movements (27.5 per cent) and drug traffickers (18 per cent). In addition, the remedy of habeas corpus had been suspended for cases of drug trafficking and terrorism. That critical situation required the Sub-Commission's attention, and the ICJ asked for the appointment of an expert to present a report to the Commission on Human Rights on the situation in Colombia.

55. Finally, the ICJ was particularly concerned at the human rights situation in the Palestinian territories occupied by Israel, especially the systematic

use of torture in Israeli prisons and the increasing number of deaths in detention. In November 1987, Israel had legalized the use of "moderate physical pressure" to extract confessions from detainees, and, according to a study made in autumn 1991 by a West Bank affiliate of the ICJ, 85 per cent of detainees had been tortured in various ways, and there had been more than 22 cases of death in custody since 1987.

56. Mr. AL-DOURI (Observer for Iraq), speaking in exercise of the right of reply, reminded the representatives of Amnesty International and the Arab Organization for Human Rights, who had mentioned Iraq in their statements, that Iraq had been at war with Iran from 1980 to 1988 and had again been subjected to a war in 1991, and that those wars had inevitably had repercussions on the political, economic and social spheres. In addition, for the last two years the Iraqi people had been subjected to much suffering because of the economic blockade imposed on his country by the international community. Amnesty International's allegations concerning the execution of military personnel in Iraq were devoid of any truth. Similarly, there was no discrimination against the population of the marshlands; only bandits and criminals were sought and punished in that region. It was true that persons were still reported disappeared, but every effort was being made to ascertain their fate. His delegation would revert to the Special Rapporteur and the way in which he was discharging his mission, when the relevant agenda item was considered. He was in fact surprised that the representative of the Arab Organization for Human Rights, whose Chairman was not only an Arab but an Iraqi, did not protest against the tragic situation in which thousands of Iraqis found themselves through the sole will of the United States. In conclusion, he advised the non-governmental organizations in question to check their sources of information before making accusations that were not supported by any proof.

Text submitted by the Sub-Commission to the Commission on Human Rights on the situation in the former Yugoslavia

57. Mr. EIDE said that, following consultations among the members of the Sub-Commission, a text on the situation in the former Yugoslavia, intended for the Commission on Human Rights, which was currently holding a special session, had been prepared and distributed in the meeting room. He read out the text, which was the following:

> "The Sub-Commission on Prevention of Discrimination and Protection of Minorities, meeting at its forty-fourth session, noting the convening of the special session on the former Yugoslavia of the Commission on Human Rights, taking into account that the right to life and other fundamental human rights are being extensively violated in the former Yugoslavia and conscious that the protection of different ethnic groups is at the core of the mandate of the Sub-Commission,
>
> Expresses its horror at its total and unqualified condemnation of policies of so-called 'ethnic cleansing', which in the former Yugoslavia has generated vast displacements of people and large flows of refugees of the different ethnic groups, and in Bosnia and Herzegovina has affected, in particular, the Muslim population;

Also expresses its deep concern at the existence of detention centres and allegations of serious human rights violations in those centres;

Demands:

(a) That steps be taken on an urgent basis to stop the massive violations of the right to life and other human rights;

(b) That the policies and practices of so-called 'ethnic cleansing' be immediately brought to an end;

(c) That displaced people be given the opportunity to return to their homes and that their safety be ensured;

(d) That full reparation be made for losses suffered as a result of the displacement;

(e) That those responsible for the commission of crimes be brought to justice and that steps be taken as a matter of urgency to this end."

He hoped that the Sub-Commission would adopt the text.

58. Mr. Alfonso Martinez resumed the Chair.

59. The CHAIRMAN said that if there was no objection, he would take it that the Sub-Commission adopted the text on the situation in the former Yugoslavia just read out by Mr. Eide, which would be submitted to the Commission on Human Rights.

60. The text on the situation in the former Yugoslavia was adopted.

61. Mr. JOINET, supported by Mr. AL-KHASAWNEH and Mrs. KSENTINI, asked the Chairman to transmit the text to the Chairman of the Commission on Human Rights as soon as possible.

62. The CHAIRMAN assured the Sub-Commission that the text would be transmitted that very afternoon.

The meeting rose at 1.15 p.m.